

REMARKS

Claims 1-18, 20-38 and 40-42 are pending in the Application with claims 1, 9, 21, 29, 41 and 42 being in independent form. Claims 19 and 39 have been cancelled without prejudice. Claims 1, 9, 21, 29, 41 and 42 have been amended.

Claim Rejections - 35 USC § 102

Claims 1-18, 20-38 and 40-42 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent 6,233,389 issued to Baron et al. (hereinafter Baron). (Present Office Action, Page 2).

Applicant respectfully traverses. “[T]he burden of establishing a prima facie case of anticipation resides with the Patent and Trademark Office.” In re Skinner, 2 USPQ2d 1788, 1788-89 (B.P.A.I. 1986). “Anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration.” W.L. Gore & Assocs. v. Garlock, Inc., 721 F.2d 1540 (Fed. Cir. 1983). When establishing a prima facie case of anticipation the prior art cited by the Patent Office must expressly or inherently disclose each element of the claim under consideration. See Cont’l Can Co. USA v. Monsanto Co., 948 F.2d 1264 (Fed. Cir. 1991).

Independent claims 1, 9, 21 and 29 recite elements not disclosed by Baron. With regard to claims 19 and 39, the Patent Office has stated that, “Baron does not teach [a] multimedia broadcast system capable of providing a text library for searching stored data.” Claims 1, 9, 21 and 29 have been amended to add the element found in claims 19 and 39, thereby obviating the rejection of independent claims 1, 9, 21 and 29.

Independent claims 41 and 42 have been amended and claim elements not disclosed, taught or suggested by Baron. Independent claims 41 and 42

recite a sink capable of searching stored data. Baron is wholly silent to a sink that is capable of searching stored data received from a signal such as cable, satellite, or broadcast, therefore Baron fails to disclose every element of claims 41 and 42. Independent claims 1, 9, 21, 29, 41 and 42 are allowable and remain patentably distinct over Baron because Baron does not disclose, teach or suggest every element of the independent claims. Likewise, dependent claims 2-8, 10-18, 20, 22-28, 30-38, and 40 are allowable based on their dependence upon allowable base claims.

Claim Rejections - 35 USC § 103

The Patent Office rejected claims 19 and 39 under 35 U.S.C. § 103(a). (Present Office Action, Page 12). Applicant respectfully traverses. Claims 19 and 39 have been cancelled and the limitations and the limitations found in claims 19 and 39 have been amended into independent claims 1, 9, 21 and 29. The Patent Office took Official notice that it is, "old and well known in the art text searching a stored data." (Present Office Action, Page 12). As the Patent Office is aware, the Applicant is required to seasonably challenge statements by the Office that are not supported on the record. M.P.E.P. §2144.03. Further, it is noted that "Official Notice" is to be limited to instances where the facts are "capable of instant and unquestionable demonstration as being well-known". M.P.E.P. §2144.03. This is not the present situation. First, in accordance with M.P.E.P. §904 it is presumed that a full search was conducted and this search is indicative of the prior art. The search failed to disclose a reference which would teach or suggest modifying the Baron to achieve the present invention. Consequently, the search revealed that the asserted substitution is not well-known and therefore is not entitled to be relied upon in order to reject the present claimed invention. If the Office is unable to provide such a reference, and is relying on facts based on personal knowledge, Applicants hereby request that such facts be set forth in an affidavit under 37 C.F.R. 1.104(d)(2).

CONCLUSION

In light of the forgoing amendments and arguments, reconsideration of the claims is hereby requested, and a Notice of Allowance is earnestly solicited.

Respectfully submitted,
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